IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO (Ord) No. 133 of 2007.

Date of Decision: 12th September, 2007.

Dr. Pyare Lal. **Appellant.**

Versus

Liaquat Ali Khan and another. **Respondents.**

Coram

The Hon'ble Mr. Justice V.K. Gupta, C.J.

Whether approved for reporting?[1]

For the petitioner:	Mr. R.K. Bawa, Senior Advocate with Mr. Inderjit Singh, Advocate.
For the respondents:	Mr. G.C. Gupta, Senior Advocate, with Mr. Ameet Singh Kanwar, Advocate.

V.K. Gupta, C.J. (Oral).

In this appeal filed under Order 43 Rule 1(u) of the Code of Civil Procedure, judgment dated 2nd April, 2007 passed in Civil appeal No.36-S/13 of 2006 by the learned District Judge, Shimla is under challenge. Vide this judgment, the learned District Judge while allowing the amendment application of respondent No.1 seeking amendment of the written statement and granting him the permission to amend the written statement has consequently set aside the judgment and decree impugned in the

[1] Whether the reporters of Local Papers may be allowed to see the judgment?

aforesaid Civil appeal No.36-S/13 of 2006 which was pending before him. The aforesaid Civil Appeal No.36-S/13 of 2006 was directed against the judgment and decree dated 17th March, 2006 passed by the learned Civil Judge (Junior Division), Court No.IV, Shimla whereby the suit filed by the appellant-plaintiff for possession of the suit property and for mesne profits was decreed. As noticed above, as a consequence of allowing the amendment prayed for by respondent No.1, the aforesaid judgment and decree passed by the learned Civil Judge (Junior Division) was set aside because in the opinion of the learned District Judge, as a consequence of the written statement having been amended the suit had to be tried afresh from the stage of written statement itself. The matter was accordingly remanded to the learned trial Court by the learned District Judge for fresh trial.

On this appeal coming up for consideration today, Mr. G.C. Gupta, learned Senior Counsel appearing for respondent No.1 has stated before me that his client does not intend to lead any fresh evidence nor does he intend to take any fresh, further or other steps in the suit because, according to Mr. G.C. Gupta, there is no need to do so. Mr. Gupta also submits that based upon the amended written statement, the appeal itself can be heard and disposed of by the learned District Judge seized of the appeal and there is no need for the matter being remanded to the trial Court for fresh trial. Mr. Gupta, therefore, submits that he has no objection if this Court, while maintaining and upholding the part of

the impugned judgment allowing the amendment of the written statement sets aside the other part of the impugned judgment whereby the judgment and decree passed by the learned Civil Judge (Junior Division) and impugned in this appeal had been set aside and the matter was remanded to the learned trial Court for trial of the suit afresh and its disposal accordingly.

Mr. R.K. Bawa, learned Senior Counsel appearing for the appellant has no objection to this course being adopted.

Based upon the aforesaid submissions of the learned counsel for the parties and the agreement having been arrived at between them, I dispose of this appeal and pass the following agreed order:-

(1) The impugned judgment dated 2nd April, 2007 passed by the learned District Judge, Shimla in Civil Appeal No.36-S/13 of 2006 is maintained and upheld only in so far as it allows the amendment application of respondent No.1 for amendment of written statement. Consequently, the written statement so amended shall be allowed to be placed on record.

(2) The aforesaid impugned judgment is hereby set aside in so far as it sets aside the judgment and decree dated 17th March, 2006 passed by the learned Civil Judge (Junior Division) Court No.IV, Shimla as also remanding the matter to the learned trial Court for the trial of the suit afresh and for its disposal.

(3) As a consequence of the above, it is directed by this Court that Civil Appeal No.36-S/13 of 2006 being restored to its original position shall be heard and disposed of by the learned District Judge, Shimla on its merits and in accordance with law, on the basis of the material available on record but in the light of the written statement as has been amended.

The record be sent back to the learned Appeal Court where the parties through their learned counsel are directed to appear on 11th October, 2007.

CMP No.316 of 2007.

In view of the disposal of the appeal, this application is also disposed of. Interim order dated 14th May, 2007 shall stand vacated.

12th September, 2007. (V.K. Gupta), C.J.
(tr)